

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 498**

Citations Affected: IC 34-28-5; IC 36-1-3-8.

Synopsis: Local government. Allows a defendant against whom a judgment is entered in an action to enforce an ordinance to perform community restitution or service instead of paying a monetary judgment. Allows a county or municipality to establish fines for ordinance violations of not more than: (1) \$2,500 for a first violation of an ordinance; and (2) \$7,500 for a second or subsequent violation of an ordinance that does not regulate traffic or parking. **(This conference committee report removes provisions that provide that cities, towns, and counties may require: (1) licensing of teen clubs; (2) criminal history background checks of owners and employees of teen clubs; (3) statements concerning the criminal background of employees of teen clubs; (4) age restrictions for individuals who may enter teen clubs; and (5) restrictions on the hours of operation of teen clubs.)**

Effective: July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 498 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 34-28-5-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) An action to
- 4 enforce a statute defining an infraction shall be brought in the name of
- 5 the state of Indiana by the prosecuting attorney for the judicial circuit
- 6 in which the infraction allegedly took place. However, if the infraction
- 7 allegedly took place on a public highway (as defined in IC 9-25-2-4)
- 8 that runs on and along a common boundary shared by two (2) or more
- 9 judicial circuits, a prosecuting attorney for any judicial circuit sharing
- 10 the common boundary may bring the action.
- 11 (b) An action to enforce an ordinance shall be brought in the name of
- 12 the municipal corporation. The municipal corporation need not prove
- 13 that it or the ordinance is valid unless validity is controverted by
- 14 affidavit.
- 15 (c) Actions under this chapter (or IC 34-4-32 before its repeal):
- 16 (1) shall be conducted in accordance with the Indiana Rules of
- 17 Trial Procedure; and
- 18 (2) must be brought within two (2) years after the alleged conduct
- 19 or violation occurred.
- 20 (d) The plaintiff in an action under this chapter must prove the
- 21 commission of an infraction or ordinance violation by a preponderance
- 22 of the evidence.
- 23 (e) The complaint and summons described in IC 9-30-3-6 may be

used for any infraction or ordinance violation.

(f) The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring actions brought under this section. Actions may be deferred under this section if:

- (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;
- (2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-37-4-2(e);
- (3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;
- (4) the defendant in the action agrees to pay court costs of twenty-five dollars (\$25) to the clerk of court if the action involves a moving traffic offense (as defined in IC 9-13-2-110); and
- (5) the agreement is filed in the court in which the action is brought.

When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled.

(g) If a judgment is entered against a defendant in an action to enforce an ordinance, the defendant may perform community restitution or service (as defined in IC 35-41-1-4.6) instead of paying a monetary judgment for the ordinance violation as described in section 4(e) of this chapter if:

(1) the:

(A) defendant; and

(B) attorney for the municipal corporation;

agree to the defendant's performance of community restitution or service instead of the payment of a monetary judgment;

(2) the terms of the agreement described in subdivision (1):

(A) include the amount of the judgment the municipal corporation requests that the defendant pay under section 4(e) of this chapter for the ordinance violation if the defendant fails to perform the community restitution or service provided for in the agreement as approved by the court; and

(B) are recorded in a written instrument signed by the defendant and the attorney for the municipal corporation;

(3) the agreement is filed in the court where the judgment was entered; and

(4) the court approves the agreement.

If a defendant fails to comply with an agreement approved by a court under this subsection, the court shall require the defendant

1 **to pay up to the amount of the judgment requested in the action**
 2 **under section 4(e) of this chapter as if the defendant had not**
 3 **entered into an agreement under this subsection.**

4 SECTION 2. IC 34-28-5-4 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A judgment of
 6 up to ten thousand dollars (\$10,000) may be entered for a violation
 7 constituting a Class A infraction.

8 (b) A judgment of up to one thousand dollars (\$1,000) may be
 9 entered for a violation constituting a Class B infraction.

10 (c) A judgment of up to five hundred dollars (\$500) may be entered
 11 for a violation constituting a Class C infraction.

12 (d) A judgment of up to twenty-five dollars (\$25) may be entered for
 13 a violation constituting a Class D infraction.

14 (e) **Subject to section 1(g) of this chapter**, a judgment:

15 (1) up to the amount requested in the complaint; and

16 (2) not exceeding any limitation under IC 36-1-3-8;
 17 may be entered for an ordinance violation.

18 SECTION 3. IC 34-28-5-8 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The violations clerk
 20 or deputy violations clerk shall:

21 (1) accept:

22 (A) written appearances;

23 (B) waivers of trial;

24 (C) admissions of violation;

25 (D) declarations of nolo contendere for moving traffic violations;

26 (E) payments of judgments (including costs) in traffic violation
 27 cases; ~~and~~

28 (F) deferral agreements made under section 1(f) of this chapter
 29 (or IC 34-4-32-1(f) before its repeal) and deferral program fees
 30 prescribed under IC 33-37-4-2(e); **and**

31 **(G) community restitution or service agreements made under**
 32 **section 1(g) of this chapter;**

33 (2) issue receipts and account for any judgments (including costs)
 34 collected; and

35 (3) pay the judgments (including costs) collected to the appropriate
 36 unit of government as provided by law.

37 SECTION 4. IC 36-1-3-8 IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Subject to subsection (b), a
 39 unit does not have the following:

40 (1) The power to condition or limit its civil liability, except as
 41 expressly granted by statute.

42 (2) The power to prescribe the law governing civil actions between
 43 private persons.

44 (3) The power to impose duties on another political subdivision,
 45 except as expressly granted by statute.

46 (4) The power to impose a tax, except as expressly granted by
 47 statute.

48 (5) The power to impose a license fee greater than that reasonably
 49 related to the administrative cost of exercising a regulatory power.

50 (6) The power to impose a service charge or user fee greater than
 51 that reasonably related to reasonable and just rates and charges for

- 1 services.
- 2 (7) The power to regulate conduct that is regulated by a state
- 3 agency, except as expressly granted by statute.
- 4 (8) The power to prescribe a penalty for conduct constituting a
- 5 crime or infraction under statute.
- 6 (9) The power to prescribe a penalty of imprisonment for an
- 7 ordinance violation.
- 8 (10) The power to prescribe a penalty of a fine as follows:
- 9 (A) More than ten thousand dollars (\$10,000) for the violation of
- 10 an ordinance or a regulation concerning air emissions adopted by
- 11 a county that has received approval to establish an air program
- 12 under IC 13-17-12-6.
- 13 **(B) For a violation of any other ordinance:**
- 14 **(i) more than two thousand five hundred dollars (\$2,500) for**
- 15 **any other a first violation of the ordinance; and**
- 16 **(ii) except as provided in subsection (c), more than seven**
- 17 **thousand five hundred dollars (\$7,500) for a second or**
- 18 **subsequent violation of the ordinance.**
- 19 (11) The power to invest money, except as expressly granted by
- 20 statute.
- 21 (12) The power to order or conduct an election, except as expressly
- 22 granted by statute.
- 23 (b) A township does not have the following, except as expressly
- 24 granted by statute:
- 25 (1) The power to require a license or impose a license fee.
- 26 (2) The power to impose a service charge or user fee.
- 27 (3) The power to prescribe a penalty.
- 28 **(c) Subsection (a)(10)(B)(ii) does not apply to the violation of an**
- 29 **ordinance that regulates traffic or parking.**
 (Reference is to ESB 498 as printed April 1, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 498

Signed by:

Senator Server
Chairperson

Representative Hinkle

Senator Broden

Representative Van Haaften

Senate Conferees

House Conferees